

October 9, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0014**
Proposed Ordinance No. **2006-0385**

ANDERSON ACRES
Preliminary Plat Application

Location: On the eastern side of Southeast Auburn-Black Diamond Road
approximately 300 feet south of the Southeast Auburn-Black Diamond
Road/Southeast 331st Street intersection

Applicant: Rita Jackson for
Anderson Acres, LLC
6106 – 51st Street Northwest
Gig Harbor, Washington 98335
Telephone: (253) 851-8956

King County: Department of Development and Environmental Services,
represented by Trishah Bull
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6758
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Approve, with conditions
Approve, with revised conditions
Approve, with revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:
Hearing Closed:

September 14, 2006
September 14, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer:	Rita Jackson Anderson Acres, LLC 6106 51 st Street NW Gig Harbor, WA 98335 (253) 851-8956
Engineer:	Cynthia Levey Jose, PE Warner Engineering 2709 Jahn Avenue NW, Suite H-5 Gig Harbor, WA 98335
STR:	16-21-06
Location:	The property is located on the eastern side of SE Auburn-Black Diamond Road, approximately 300 feet south of the SE Auburn-Black Diamond Road/SE 331 st Street intersection.
Zoning:	RA-5
Acreage:	69.88 acres
Number of Lots:	14
Density:	0.2 units per acre
Lot Size:	Ranges from approximately 3.75 to 5.78 acres
Proposed Use:	Single-family detached dwellings
Sewage Disposal:	Individual On-site Septic Systems
Water Supply:	Covington Water District
Fire District:	King County District No. 44
School District:	Kent School District No. 415

Application Completeness Date: September 7, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a 69.88-acre, roughly rectangular parcel (with an angled northwest corner) on the east side of Southeast Auburn-Black Diamond Road, approximately 300 feet south of its intersection with Southeast 331st Street. It is in the unincorporated area just west of Black

Diamond. The site terrain consists of a sequence of gently to moderately rolling low ridges and depressions with their long axes oriented northwest-southeast, with an overall slope to the west. The ridge sides contain some steeply sloped areas. The property contains two different types of soils generally, with the west side easily accommodating infiltration and the east side consisting of glacial till which does not percolate well. The property lies in the Middle Green River subbasin of the Green River drainage basin and contains three Class 2 wetlands. No other environmentally sensitive areas are identified on the property or in close proximity. The site is wooded with typical Northwest second and third growth mixed-species trees, understory and groundcover. Development on the site consists of a cellular communications tower in the western portion near the Southeast Auburn-Black Diamond Road frontage and a Covington Water District water tank in the north-central portion. A small shed is also located in the northwest portion. The surrounding area is developed with rural-scale single-family residences to the north and is undeveloped to the east and south.

4. Applicant Anderson Acres, LLC proposes subdivision of the property into 14 lots for single-family detached residential development on lots ranging from approximately 3.75 to 5.78 acres, resulting in an overall density of .2 dwelling units per acre. Access to the lots would be provided by the extension of a private road easterly into the site from the Southeast Auburn-Black Diamond Road frontage. That main access road would curve southeasterly and then east to cross a depressional area in the center of the property between two wetlands, and then continue east to the east central portion of the property before curving 90 degrees south to terminate along the southern boundary with a temporary turnaround easement. A short cul-de-sac would extend southerly from the main internal road in the western portion, to serve Lots 1-4, and several cul-de-sac bulbs would be provided along the internal road length for turnaround areas. Lot 14 in the far northeastern corner of the site would have a long panhandle driveway extending to the main internal private road, which driveway would cross a wetland in a relatively narrow area so as to minimize adverse impact by the crossing. Mitigation for the crossing impact would be provided by nearby enhanced wetland areas and buffers. Water service would be provided by the Covington Water District and residential sanitation by individual onsite systems.
5. The rolling terrain of the site divides the property into three main drainage sub-basins with four outlets. A surface water adjustment has been approved to combine the onsite sub-basins for conveyance of development storm drainage under file no. L05V0041. The road infrastructure drainage will generally be conveyed to an infiltration pond in the northwest corner of the site near the Southeast Auburn-Black Diamond Road frontage. Level 2 flow control specifications of the 1998 King County Surface Water Design Manual will apply to the drainage facility requirements. (There is a discrepancy between the drainage adjustment and the downstream analysis provided for the development regarding the Tract C/Wetland B area, with the downstream analysis concluding that such area drains to the south to Crisp Creek, whereas the adjustment concludes that the drainage from that area loops around to the east subbasin and north to Horseshoe Lake, which is a closed depression and has experienced severe flooding problems historically. If the drainage is to the Horseshoe Lake drainage basin, it would be subject to Level 3 flow control. DDES and the Applicant have agreed upon an additional condition of preliminary plat approval that requires reevaluation of the path from storm basin C; see Condition 7.h.) Most of the development drainage from individual lots will be infiltrated using individual systems.

6. Traffic impacts of the proposed development would be adequately mitigated under the applicable code provisions of Title 14 KCC. All resident public schoolchildren will be bussed to their respective schools. Safe walking conditions for resident public schoolchildren will be provided by the extension of an offsite shoulder improvement on the east side of Southeast Auburn-Black Diamond Road to the Southeast 331st Street intersection, where a bus stop is located.

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the RA-5 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on May 27, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Anderson Acres* subdivision, as revised and received May 27, 2005, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the RA-5 zone classification. All lots shall meet the minimum dimensional requirements of the RA-5 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).

6. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. A surface water adjustment (L05V0041) is approved for this site. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans, subject to any revisions required by Condition 7.h below.
 - e. The site is subject to the Level 2 flow control and basic water quality requirements in the 1998 King County Surface water Design Manual (KCSWDM), except as noted below.
 - f. Individual lot infiltration drainage facilities are proposed for most of the lots in this project. A typical lot stormwater design shall be shown on the engineering plans. The construction and permitting of the individual lot facilities shall be accomplished with the building permits. Notes to this effect shall be provided on the final recorded plat and the engineering plans.

- g. Level 3 flow control is required for any lots draining to Wetland A (Lots 11 thru 14). If these lots ultimately drain to the west, away from Wetland A, Level 2 flow control specifications are required. Individual lot infiltration is also an option for these lots, as approved by DDES.
 - h. The Level 1 Offsite Analysis shall be re-evaluated for the south central basin (from the proposed Tract C drainage facility). If the downstream path is concluded to flow to the east subbasin and north to Horseshoe Lake, the facility shall be designed with Level 3 Flow Control specifications. If the flow path is concluded to be away from Horseshoe Lake, the Flow Control design shall meet the Level 2 Flow Control specifications.
- 8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. Roads A and C shall be improved to the rural subaccess street standard. Road C shall be designed with a temporary cul-de-sac at the south property line.
 - b. Road B shall be improved to the rural minor access street standard.
 - c. FRONTAGE: The entire frontage along the Southeast Auburn-Black Diamond Road shall be improved to the rural Principal Arterial standard. This shall include 20 feet of paving: a 12-foot wide travel lane and an 8-foot wide shoulder, along the “southeast” side of the street. As required by the King County Road Standards, this improvement shall include necessary roadway illumination.
 - d. These improvements shall include an appropriate transition to the existing roadway improvements.
 - e. The shoulder shall be designed to a full-depth roadway section to allow for future use as a part of the traveled way.
 - f. The Applicant shall dedicate 20-feet of right-of-way for Southeast Auburn-Black Diamond Road.
 - g. A full width pavement overlay may be required where widening the existing asphalt roadway, as noted in KCRS Section 4.01F.
 - h. OFF-SITE: Southeast Auburn-Black Diamond Road shall be widened from the northerly subdivision boundary to the intersection of Southeast 331st Street to provide safe conditions for school-age pedestrians walking to the school bus stop at the intersection of Southeast 331st Street/Southeast Auburn-Black Diamond Road. These improvements shall consist of an 8-foot wide paved shoulder on the “southeast” side of Southeast Auburn-Black Diamond Road.
 - i. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.

- j. A road variance (L04V0069) is approved for this site. All conditions of approval for this variance shall be met prior to engineering plan approval.
- 9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
- 10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
- 11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
- 12. There shall be no direct vehicular access to or from Southeast Auburn-Black Diamond Road from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
- 13. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
- 14. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
- 15. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. The Class 2 wetlands shall have a 50-foot buffer as shown on the preliminary plat map dated May 27, 2005.
- b. All sensitive areas and their buffers shall be placed in Sensitive Area Tracts for long term protection.

- c. Signage shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.
 - d. A 15-foot building set back line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.
 - e. Sensitive area tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.
 - f. Road crossings of wetlands and buffers may be allowed per KC 21A.24.330. Construction techniques such as retaining walls maybe required at wetland crossings to limit wetland impacts. A final mitigation plan shall be required during engineering review.
 - g. Per KC staff site visit, Wetland C may extend further north than what is shown on the preliminary plan set. This area shall be re-evaluated during engineering review by the applicant's biologist. This potential wetland area may affect the layout of proposed Lot 6.
 - h. Wetland hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how wetland hydrology will be maintained after the site is developed.
 - i. The engineering plans shall be routed to Critical Areas Staff for review of compliance to the above conditions.
16. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any

clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if Southeast Auburn-Black Diamond Road is on a bus route. If Southeast Auburn-Black Diamond Road is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

- i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
- 19. A Forest Practice Permit will be required for the removal of trees for roads and drainage tracts, prior to engineering plan approval.
- 20. In the event that any archaeological objects are uncovered on the site, the applicant shall comply with RCW Chapter 27.53, Archaeological Sites and Resources. Immediate notification and consultation with the State Office of Archaeology and Historical Preservation, King County Office of Cultural Resources and relevant tribes (including the Suquamish, Puyallup and Muckleshoot tribes) is required if discovered materials are prehistoric and a site is present.

ORDERED this 9th day of October, 2006.

Peter T. Donahue
Interim King County Hearing Examiner

TRANSMITTED this 9th day of October, 2006 to the following parties and interested persons of record:

Renee Alberts
33220 - 210th Ave. SE
Auburn WA 98092

Joseph & Marcell Anderson
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Tacoma WA 98465

Covington Water District
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Kent WA 98042

Vernard J. Fairchild
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MS KSC-TR-0231

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DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before October 23, 2006***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before October 30, 2006***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE SEPTEMBER 14, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0014.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Bruce Whittaker and Kristen Langley, representing the Department; and Cynthia Jose representing the Appellant.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|---|
| Exhibit No. 1 | Department of Development and Environmental Services file no. L04P0014 |
| Exhibit No. 2 | Department of Development and Environmental Services Preliminary Report, dated September 14, 2006 |
| Exhibit No. 3 | Application for Land Use Permits received September 7, 2004 |

- Exhibit No. 4 SEPA Environmental checklist received September 7, 2004
- Exhibit No. 5 SEPA Determination of Non-significance issued August 22, 2006
- Exhibit No. 6 Affidavit of Posting indicating a posting date of November 1, 2004; received by DDES on November 4, 2004
- Exhibit No. 7 Preliminary plat map received May 27, 2005 (revised)
- Exhibit No. 8 Level 1 Downstream Drainage Analysis and Conceptual Storm Drainage Report by Warner Engineering, received May 27, 2005 (revised)
- Exhibit No. 9 Infiltration Testing and Subsurface Exploration Report by Krazan & Associates, Inc., received May 27, 2005
- Exhibit No. 10 Wetland Delineation Report by Nisqually Environmental received September 7, 2004
- Exhibit No. 11 Wildlife Assessment Report by Nisqually Environmental received October 26, 2004
- Exhibit No. 12 Preliminary Public Health Approval approved August 30, 2004
- Exhibit No. 13 Approved KCRS Variance L04V0069, dated November 23, 2004
- Exhibit No. 14 Approved KCSWDM Adjustment L05V0041, dated September 15, 2005
- Exhibit No. 15 New condition 7.h